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FISCAL IMPACT STATEMENT

LS 6729

BILL NUMBER: HB 1291

NOTE PREPARED: Jan 9, 2008

BILL AMENDED:

SUBJECT: Unauthorized Aliens.

FIRST AUTHOR: Rep. Eberhart

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☒ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill requires the Superintendent of the State Police Department (Superintendent) to: (1) negotiate terms of a memorandum of understanding concerning a pilot project for the enforcement of federal immigration and customs laws; and (2) designate appropriate law enforcement officers to be trained under the memorandum. The bill requires: (1) the Superintendent and Governor, unless otherwise required by the applicable federal agency, to sign the memorandum on behalf of the state; and (2) the State Police Department to apply for federal funding, if available, for the costs associated with training the law enforcement officers. It also provides that a law enforcement officer certified as trained may enforce the federal immigration and customs laws.

This bill prohibits a state agency or political subdivision from providing federal, state, or local public benefits to a person who is not a: (1) United States citizen; or (2) qualified alien under the federal Immigration and Nationality Act and lawfully present in the United States. The bill also requires a state agency or a political subdivision to verify the lawful presence in the United States of each individual who: (1) is at least 18 years of age; and (2) applies for federal, state, or local public benefits administered by the agency or political subdivision. It requires a state agency or a political subdivision to: (1) verify the lawful presence of the person by requiring the person to execute a verified affidavit stating that the person is a United States citizen or a qualified alien; (2) verify the lawful presence of certain individuals through the Systematic Alien Verification of Entitlements (SAVE) program; and (3) report errors and significant delays in the SAVE program. The bill provides that: (1) a state agency or political subdivision may provide variations of the verification of lawful presence requirements; and (2) a person who makes a false, fictitious, or fraudulent statement of representation in an affidavit verifying lawful presence commits a Class D felony.

The bill also requires employers to: (1) comply with requirements regarding verification of employment under federal law; and (2) make verification forms available for inspection by the Commissioner of Labor.

The bill also requires the Commissioner of Labor to file a complaint with the United States Office of the Attorney General if an employer fails to retain or to make available for inspection a verification of each employee.

Effective Date: July 1, 2008.

Explanation of State Expenditures: *(I) Indiana State Police (ISP):* Requiring the Superintendent of the Indiana State Police to negotiate a memorandum of understanding with either the U.S. Department of Justice (DOJ) or U.S. Department of Homeland Security (DHS) will increase the workload of the Superintendent. The time necessary to complete this negotiation with either DHS or DOJ is unknown.

The Superintendent is also required to designate law enforcement officers for training under the negotiated memorandum. Law enforcement personnel that are designated for training will be able to enforce the federal immigration and customs laws while acting within the scope of their law enforcement duties and will not require an additional division of law enforcement. ISP is required to apply for federal funding to offset the costs associated with training law enforcement personnel of the memorandum's requirements. If federal funding is secured, the state will not incur any additional expenses associated with this training requirement. If federal funding is not secured, state expenditures may increase if training is still provided to law enforcement personnel at the discretion of ISP and state decision makers.

(II) Public Benefits: SAVE Program Requirement: This bill requires state agencies or political subdivisions to utilize the SAVE program to verify if individuals applying for federal, state, and local public assistance are legally present in the United States. SAVE verification is only required if the individuals sign an affidavit alleging they are a lawfully present alien. This bill may increase expenditures for state agencies or political subdivisions to the extent that the SAVE program was not utilized before when administering public benefits. The number of state agencies that currently utilize the SAVE program are unknown.

Impact on Public Assistance: This legislation will impact state and local expenditures on public assistance only to the extent that state and local benefits are currently provided to illegal aliens. Federal benefits are defined under the bill as: (a) any grant, contract, loan, professional license, or commercial license appropriated funds of the United States, (b) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by appropriated funds of the United States.

Currently, illegal aliens are banned from receiving any federal public benefit except for care and services necessary for the treatment of an emergency medical condition; short-term, noncash, in-kind emergency disaster relief; public health assistance for immunizations; and other services designated in federal law. Additionally, federal law specifies that illegal aliens are not eligible for any state or local public benefit programs that receive federal funding in full or in part.

As of 2005 there were an estimated 55,000 to 85,000 unauthorized aliens in Indiana and an estimated 128,000 authorized immigrants that were admitted to the U.S. during FY 2006 that claimed Indiana as their state of destination. There have been an additional 55,000 immigrants in the state of Indiana that have been legalized between the years 1997 to 2006. This is the population that would be subjected to the requirements of this bill provided they identify as legal residents or legally present in the U.S. on their signed affidavits.

Penalty Provision: Under the bill, a person who makes a false, fictitious, or fraudulent statement of

representation in an affidavit executed to verify their legal presence in the United States commits a Class D felony. A Class D felony is punishable by a prison term ranging from 6 months to 3 years in jail or a reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for Class D felony offenders is approximately ten months.

Adoption of Rules/Ordinances/Resolutions & Written Reports: The bill allows an agency to adopt rules and a political subdivision to adopt an ordinance or a resolution to carry out the requirements of the bill.

(III) Commissioner of Labor: Employers are required under the legislation to comply with the requirements regarding verification of employees under the U.S. Immigration and Nationality Act. Under the legislation employers in the state are required to retain verification forms for each employee and make these forms available to the Commissioner upon request. If employers do not retain or make these forms available, the Commissioner is required to file a complaint with the U.S. Office of the Attorney General. This may increase the workload of the Commissioner to the extent that employers do not retain these forms or make them available upon request. [Note: The Department of Labor reverted \$649,000 to the General Fund in FY 2007.]

Funding and resources required by ISP, the Department of Labor, and state agencies to meet the requirements of this legislation could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Background Information: Indiana Code currently specifies that illegal immigrants are not eligible for Temporary Assistance for Needy Families (TANF), Medicaid, and Unemployment Insurance. This bill would encompass the remaining state and local benefits that do not receive any federal funding. The bill could potentially reduce the number of persons in the state who are eligible for state or local benefits. This could result in savings for the state or allow the state to redirect the funds to other persons needing services within a program for which services were not provided under the bill. Actual savings for the state would depend on the number of persons no longer eligible for services and the type and cost of services that they would otherwise receive. [Note: Some of these programs may be reimbursable by the federal government. Should the state not reallocate the funds to other persons within a program for services, the state could potentially reduce its overall federal funding.]

Currently, the Division of Family Resources (DFR) requires a declaration of citizenship/immigration status during the application process for public benefits. Any inability or unwillingness to complete the application results in the individual being considered an undocumented immigrant for public benefits. DFR does not report these individuals to U.S. Citizenship and Immigration Services (USCIS) unless USCIS has established that the immigrant is unlawfully in the United States. SAVE verification is currently used, but not required by DFR. Refusal to sign the declaration of lawful presence will result in ineligibility for public benefits.

DFR is currently working on an eligibility modernization program that changes how individuals access

welfare benefits. This project is scheduled for completion by July 1, 2008. This project is an IBM-led coalition that will change data collection for the determination of eligibility for public benefits, including authorized presence in the United States. IBM uses the SAVE program to confirm authorized presence of those applying for public benefits. Funds for this program have already been allocated.

The SAVE program is administered by the USCIS, which is an agency housed in the U.S. Department of Homeland Security. Fees are charged to entities that request verification with the SAVE program. A minimum monthly service fee of \$25 is automatically billed to user agencies whose request volume does not equal or exceed \$25 that month. This amount will equal a minimum expense of \$300 a year for SAVE verification for each user agency. Under the bill the SAVE verification would take place as a requirement to receive public benefits not as a requirement for continued benefits.

The following agencies reverted the following amounts to the General Fund in FY 2007: Indiana State Police, \$185,000; Division of Family Resources, \$14 M; Department of Labor, \$649,000.

Explanation of State Revenues: *Federal Revenue for ISP Training Costs:* State revenue will increase if federal funding is received for training law enforcement personnel. The amount the state receives depends on how much is requested in the proposal and how much the funding is awarded to the state.

Penalty Provision: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund, whereas court cost fees are deposited into the state General Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$17), the public defense administration fee (\$3), the court administration fee (\$3), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: This bill will increase the expenditures of local governments and local government agencies that would be required to utilize the SAVE program to verify legal presence of benefit applicants that identify as legal nonresidents. Expenditures will increase to the extent that the SAVE program was not utilized before to verify legal resident status. The ability of local political subdivisions to utilize the SAVE program as well as the funding status of each political subdivision that provides public benefits is indeterminable.

Local political subdivisions will also be required to create reports detailing their adherence to the provisions of the legislation. This can impact the workload and resources of these local agencies to the extent these tasks were not performed before.

Penalty Provision: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered for Medicaid and Welfare fraud, local governments would receive revenue from court fees.

However, any change in revenue would likely be small.

Local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Department of Labor, ISP, DFR, Family and Social Services Administration.

Local Agencies Affected: Trial courts; local law enforcement agencies; local political subdivisions that administer public benefits.

Information Sources: Indiana Sheriffs' Association, DOC, PEW Hispanic Center, U.S. Citizenship and Immigration Services, U.S. Census Bureau, U.S. Department of Homeland Security; Jim Dunn, FSSA.

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